

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**2:05 CR 19-4
2:05 CR 19-5
(MAXWELL)**

**LARRY A. LYONS,
BILLY GEORGE LEARY, JR.,**

Defendants.

ORDER

By Order entered July 26, 2005, the Court referred any pre-trial motions to be filed on behalf of either the United States of America or the Defendant in the above-styled criminal action to United States Magistrate Judge John S. Kaull, pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B), and authorized Magistrate Judge Kaull to conduct any necessary hearings in resolving said motions or in preparation for submission of proposed findings of fact and recommendation for disposition.

On August 16, 2005, Defendant Lyons filed his Motion To Suppress, and on August 25, 2005, Defendant Leary filed his Motion to Suppress. The Defendant's Motions To Suppress sought the suppression of all evidence seized after what Defendant allege to have been an illegal stop. The Government filed a response to Defendants' Motions to Suppress on August 29, 2005. The Docket in the above-styled criminal action reflects that a hearing on the Defendant's Motion To Suppress was conducted by United States Magistrate Judge John S. Kaull on September 14, 2005. Thereafter, on September 28, 2005, Magistrate Judge Kaull entered his Report And Recommendation, wherein he recommends that the Court deny Defendants' Motions To Suppress.

Magistrate Kaull's Report And Recommendation advised the parties, pursuant to 28 U.S.C. § 636(b)(1), that any objections to said Report And Recommendation which were not filed, in writing, with the Clerk of Court within ten (10) days after being served with a copy of said Opinion/Report And Recommendation, were waived. No objections have been filed.

The Court has reviewed the record before it and has conducted a *de novo* review of all matters before Magistrate Judge John S. Kaull in considering Defendants Lyons and Leary's Motions To Suppress. Based upon its review, it appears to the Court that Magistrate Judge Kaull's Report And Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled criminal action. Accordingly, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge Kaull in the above-styled criminal action be, and the same hereby is, **ACCEPTED** in whole. It is further

ORDERED that Defendant Larry Lyons' Motion To Suppress be, and the same hereby is, **DENIED** in accordance with the recommendation of Magistrate Judge Kaull. It is further

ORDERED that Defendant Billy George Leary, Jr.'s Motion To Suppress be, and the same hereby is, **DENIED** in accordance with the recommendation of Magistrate Judge Kaull.

The Clerk of Court is directed to transmit copies of this order to counsel of record.

ENTER: November 8th, 2005

/s/ Robert E. Maxwell
United States District Judge